# UNITED STATES PATENT AND TRADEMARK OFFICE

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/653,764 | 09/01/2000 | Sudhindra P. Herle | SAMS01-00090 | 6143 |

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| EXAMINER |
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| SIMITOSKI, MICHAEL J |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2134 | |

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | Application No. | Applicant(s) |
|---|---|---|
| *Advisory Action*<br>*Before the Filing of an Appeal Brief* | 09/653,764 | HERLE, SUDHINDRA P. |
| | Examiner | Art Unit | |
| | Michael J. Simitoski | 2134 | |

*--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

THE REPLY FILED <u>30 January 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

    b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

       Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

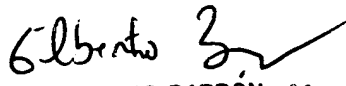       NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: _____.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

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TECHNOLOGY CENTER 2100

Continuation of 11. does NOT place the application in condition for allowance because:

1.        No claims are cancelled or amended in this instant amendment.

2.        In general, Bao teaches sending TCP/IP packets over radio using at least RLP packets (sending TCP/IP data over a radio/data burst protocol). Gellens teaches the provisioning of a mobile device and converting TCP data to I-683A data/data burst. Raith teaches radio/cellular communication, which commonly uses cells to differentiate coverage areas and base stations for communicating with mobile units. Finally, Salo teaches that the IP Sec standard is known in the art and can provide encryption at the packet-processing layer (specifically, col. 13 lines 14-20).

3.        Applicant's response (p. 12) argues that Bao does not disclose a (1) muti-base station environment (2) transmitting a software program, a software correction patch and/or a provisioning data to a mobile station from a server associated with a wireless network (3) an encryption controller and (4) a data burst message protocol controller. However, as pointed out clearly on pp. 5-6 of the final Office Action, Bao is not cited for teaching these components.

4.        Applicant's response (p. 13, 2) argues that Gellens does not disclose a mobile station having an encryption controller capable of converting said IP packet from an encrypted format to a decrypted format according to at least one of IP Sec, SSH, SSL and PPTP. However, as clearly stated in the final Office Action on p. 6, of the limitations cited by applicant, Gellens is only cited for teaching an encryption controller. Applicant's response (pp. 13-14, 1) argues that Gellens does not teach any specific means for performing the encryption, only that it is desirable to do so. However, applicant's claim requires no specific means, hardware, software or architecture for the encryption controller to perform its encryption. Furthermore, the question regarding obviousness is such that would one having ordinary skill in the art of security, cryptography and mobile communication find the addition of an encryption controller an obvious modification by turning to the Gellens reference for advice. Gellens explicitly states that encryption is beneficial. Consequently, obviousness relies on the question as to if would one having ordinary skill in the art of security, cryptography and mobile communication would understand that an encryption controller (a term which has no limiting features in the claim other than it performs encryption and decryption and it performs this according to one of the protocols listed). The Examiner maintains that the generic term "encryption controller" would have been obvious as one of ordinary skill knew, at the time the invention was made, that if encryption is to be performed, that a controller (software, hardware or both) is required as there is no other way. The Examiner further maintains that one of ordinary skill at the time the invention was made would have understood that many commercially available processors and algorithms were available for encrypting and decrypting packets and therefore the addition of an "encryption controller" to perform the beneficial encryption taught by Gellens would have been obvious. Further, as taught by Salo, IP Sec was known in the art. Since encryption must be performed in a software algorithm or hardware component, a "controller" is required.

5.        Applicant's response (p. 14, 2) argues that Raith fails to teach any other required elements. However, Raith is not presently cited for teaching any of the other elements.

6.        Applicant's response (p. 15) argues that there is no suggestion or motivation within the Salo reference of a mobile station comprising an encryption controller capable of converting said IP packet from an encrypted format to a decrypted format according to one of IP Sec, SSH, SSL and PPTP. However, Salo is not required to teach the entire limitation applicant has recited. Salo is cited for teaching that amongst encryption methods, IP Sec is a well-known protocol for providing packet encryption and decryption. One of ordinary skill in the art would have been motivated to look to IP Sec for just this reason when looking for an encryption method when consulting Gellens' disclosure of packet encryption for at least the reason of IP Sec's well established notoriety and ubiquity in the art. Further, in col. 1, lines 20-29, Salo suggests wireless and mobile computing. In the next paragraph, Salo cites cellular telephone technology. Further, in cols. 6-8, Salo discloses the elements that the system comprises, including PDA's mobile computers and in general wireless networks (col. 7, lines 1-25). Salo further teaches that the system includes base stations and a mobile switching center, as are disclosed in the inventions of Gellens and Raith and are used to accomplish the software disclosure of Bao.

7.        Applicant's response (p. 15, 2) argues generally that the "Examiner has arbitrarily cited four references in support of the §103 rejection by selecting discrete elements from each and prospectively combining these discrete elements (and seeking out still others)". However, the cited references teach similar systems, with applicant to wireless/mobile/cellular communication using packet based encryption. Bao and Gellens each teach parts of a similar system, Bao teaching using a radio to transmit TCP packets and Gellens teaching provisioning a radio and specifically supporting TCP communication (see Gellens, §4.1 & §8.1). Gellens teaches adding this functionality to the mobile station reduces duplicate software in the mobile station (p. 28). Further, Raith teaches that it is well known in the art of cellular radio communications to incorporate multiple cells, each with their own base station, where a mobile station can communicate with a plurality of base stations to enable a mobile station to communicate from multiple cells (col. 9, lines 37-62 & col. 10, lines 1-28). As this applies to mobile cellular communication, one of ordinary skill in the art would have been motivated to specifically communicate using cells and base stations within the cells to allow further mobility with respect to the mobile stations. Bao, alone, does not teach encryption techniques such as IPSec, SSH, SSL/TLS or PPTP as Bao is teaching the data transfer protocol not particularly concerned with implementation (specific applications). These techniques are well known in the art for packet-based communication (SSH is used in many secure FTP communications, SSL is used in the ubiquitous "https" protocol in combination with certificates in the public key infrastructure to provide security and private in web communication and IPSec is commonly used with virtual private networks. Salo teaches that the IP Sec standard is known in the art and can provide encryption at the packet-processing layer (col. 13 lines 14-20). For at least the reason that the end units of Salo are communicating in accordance with the IPSec protocol for the explicit purpose of encryption and hence security, one would have been motivated to provide encryption functionality to Bao, as modified by Gellens and Raith. Furthermore, Gellens refers specifically to the fact that the mobile station can optionally perform encryption (§4.1), directly implying that one of ordinary skill in the art would have been motivated to provide encryption to the wireless system. As Salo teaches that IPSec is a good choice for encryption at a packet layer (col. 13, lines 14-20) and that IPSec is performed between two computing devices, one having ordinary skill in the art at the time the invention was made would have been motivated to modify Bao, as modified, to encrypt and decrypt packets according to the IP Sec tunneling protocol due to its commonality in the art as a packet-encryption technique and multiple options.

8.        In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on        combinations of references. See In re Keller, 642 F.2d 413, 208

USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).